

REMARKS

Reconsideration and allowance of the instant application is respectfully requested in light of the foregoing amendments and the following remarks.

Claim Status

Claims 1, 3, 5, 9, 10, 12-14, 16, 17, and 34 are pending. Claim 1 is amended. Support for the amendment of claim 1 is found in the specification at page 11, lines 3-17. New claim 34 is added. Support for new claim 34 is found in the specification at page 11, lines 3-17. Claims 2, 4, and 11 were previously cancelled. No new matter is added. Claims 18-33 were withdrawn from consideration in view of the restriction requirement.

Rejection

Claims 1, 3, 5, 9, 10, 12-14, 16, and 17 are rejected under §102(b) as anticipated by, or in the alternative, under §103(a) as obvious over Tabaksblat. Applicant respectfully disagrees.

The Examiner has taken the position that Tabaksblat teaches all the element of claim 1. In particular, the Examiner takes the position that example 1 of Tabaksblat teaches the surfactant level in the porous polyolefin particles is 0.17 wt%. See:

7/14/08 Office Action, Paragraph 4, page 3 and Paragraph 7, page 5.

Claim 1 has been amended to recite a minimum surfactant level of 1.0 wt%. This is clearly outside the range taught by Tabaksblat. Accordingly, the §102(b) rejection based upon Tabaksblat must be removed.

The §103(a) rejection must also be removed. Tabaksblat teaches in Example 1 that the surfactant level of 0.17 wt% make a suitable particle and in Example 2 that a surfactant level of 0.14 wt% $\{=[0.57/(54+330+0.016+0.57)] \times 100\}^1$ makes a suitable particle, but in Comparative Experiment A that the surfactant level of 1.00 wt% $\{=[1.5/(45+330+1.5)] \times 100\}^2$ does not make a suitable particle (i.e., "no well-defined particles could be distinguished"). Accordingly, Tabaksblat teaches away from a surfactant level of 1.00 wt%. In other words, the instant invention is not predictable in view of Tabaksblat because Tabaksblat shows that a suitable particle can not be made with 1.0 wt% surfactant. Therefore, the rejection based upon Tabaksblat fails to set forth a *prima facie* case of obviousness

¹ Based upon the Examiner's calculations in the 7/14/08 Office Action, Paragraph 4, page 3, and Paragraph 7, page 7.

² Based upon the Examiner's calculations in the 7/14/08 Office Action, Paragraph 4, page 3, and Paragraph 7, page 7.

and the obviousness rejection based upon Tabaksblat must be removed.

Likewise, new claim 34 is also patentable over Tabaksblat for the foregoing reason.

Finally, all dependent claims now depend from an allowable base claim and are thus allowable.

Conclusion

In view of the foregoing, Applicant respectfully requests an early Notice of Allowance.

Respectfully submitted,



Robert H. Hammer III
Attorney for Applicant
Registration No. 31,764

Customer No. 29494
Hammer & Associates, P.C.
3125 Springbank Lane
Suite G
Charlotte, NC 28226
Telephone: 704-927-0400
Facsimile: 704-927-0485
H:\2037\004\Prosecution\Amendment\01408.doc